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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,995	01/26/2004	Philip Stephen Smith	PA0959.ap.US	6766

7590 11/13/2006

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EXAMINER
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MOSSER, ROBERT E

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/764,995

Applicant(s)

SMITH ET AL.

Examiner

Robert Mosser

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7-2-2004 & 11-12-2004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on July 2<sup>nd</sup>, 2004 and November 12<sup>th</sup>, 2004 have been considered by the examiner and is attached.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 through 17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over at least claim 75 of copending Application No. 10/910713, and at least claim 73-74 of copending Application No. 10/910,799. Although the conflicting claims are not identical, they are not patentably

Art Unit: 3714

distinct from each other because the presented claim utilize a similarly described video apparatus for the incorporation of composite images in a card game.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 through 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoda (US 2004/0063482).

Claims 1 through 16 are **apparatus** type claims including feature limitations are directed to the intended use of a video wagering system. These feature limitations include the formation of composite images from multiple video images of a dealer against a background wherein the at least one of the images maybe a dynamic image

(Pending claim 1), a video image (pending claim 3), or a live video image (Pending claim 2). In accordance with MPEP §2114 an apparatus type claims must be structurally distinguishable from the prior art. The particular image displayed, the manner in which the image is displayed, and the manner in which the image is derived is immaterial to an apparatus claim beyond defining capabilities that must be presented in the apparatus as a whole or in part thereof.

>While features of an apparatus may be recited either structurally or functionally, claims<directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). (MPEP 2114)

Claims 1 through 10: Toyoda teaches an automated wagering system including a first bank of common displays (Elements 32, 42) containing a composite image including a dealer and background elements (Figure 4) further visible to the game participants (Figure 1) and a second bank of individual displays associated with a respective game participant (Paragraph 64 & Elm 52). Toyoda further teaches the inclusion of at least one processor (Figures 2-3) enabling device operation. As mention in the preceding two paragraphs the claimed features directed to a method of forming the dealer image, and the utilization of a Picture-in-Picture display style do not effect the

presented structure of the apparatus and instead provide for the intended use of an apparatus. Accordingly these features are considered addressed based on the correlation of structural components.

Claims 11 through 16: Toyoda teaches the utilization of a singular CPU in each table game arrangement such as shown in figures 1 and 2 wherein the singular processor performs the functions of a processor at each player position, a common dealer processor, and a main processor. All of which are in communication with one another as they are integral to one another. The applicant's present arrangement of processors is understood to be the separation of the singular processor as taught by the prior art of Toyoda into multiple discrete devices. MPEP 2144.04V sets forth that making a singular element separable or alternatively multiple separable parts integral is obvious (In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965), In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)). It would have been obvious to one of ordinary skill in the art at the time of invention to have distributed the singular CPU of Toyoda into multiple CPUs including a controller CPU, a Dealer CPU, and a respective CPU at each of the player stations in order to offer system redundancy and/or provide a system wherein multiple user terminals could be added without being limited by the central CPUs processing ability.

Claims 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoda (US 2004/0063482) as applied to claims 1 through 16 above and in further view of Hazzard (US 6,731,416)

Art Unit: 3714

Claim 17: Toyoda the incorporation of cards games including poker and the need to conceal ones hand from unwanted onlookers (*Toyoda* Paragraph 172) is silent regarding the incorporation of a changeable light filter that changes the displays transmission of images based on the angle of view. In the art of screen privacy protection, Hazzard teaches the use of a holographic display filter changes the displays transmission of images based on the angle of view in order to ensure that unwanted onlookers are unable to view information presented on a display screen (*Hazzard* Abstract & Col 1:32-44). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the holographic privacy filter of Hazzard to assist a player in concealing their cards from unwanted onlookers as taught by Toyoda

### ***Conclusion***

The following prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

1. Miyamoto et al (US 7,128,651) teaches a card game for displaying images based on sound recognition.

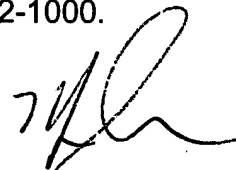
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone

Art Unit: 3714

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to be a stylized 'M' or 'W' followed by a flourish.

REM  
November 9<sup>th</sup>, 2006